UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

MERCY GENERAL HEALTH PARTNERS
Employer

and CASE GR-7-UC-568

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 79, AFL-CIO
Union

DECISION AND ORDER

The Employer filed the petition in this matter seeking to clarify the existing "Tech Unit II" bargaining unit at its 1700 Oak Avenue campus in Muskegon, Michigan to exclude the position of medical assistant (MA) from that unit. Further, the Employer is seeking to clarify the existing "Service and Support Unit" at its Oak campus and its 1500 East Sherman Boulevard campus in Muskegon, Michigan to include the MAs from the Oak campus. As a result, if the requested clarification is granted, the seven MAs employed at the Oak campus in the "Tech Unit II" would be included in the "Service and Support Unit" with the four MAs employed at the Oak and Sherman campus. [1]The Employer asserts that its petition is timely and based upon a community of interest analysis, its petition should be granted. The Union opposes the clarification, which would change two existing, historical units. No party asserts any recent substantial changes in the job duties or responsibilities of the MAs.

Background

On January 22, 1998, following an election in Case GR-7-RC-21202 in a residual unit of MAs and certain other technical employees not involved in the instant petition, a Certification of Results of Election issued placing the MAs, then employed by Muskegon General Hospital at the Oak campus, in a pre-existing technical unit represented by the Union. Thereafter, Muskegon General Hospital and Mercy Hospital (the Sherman campus) merged to form the Employer. Currently, the MAs employed at the Oak campus are covered by a collective bargaining

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[1] The instant petition was filed under Section 9(b) of the National Labor Relations Act, as amended. Thereafter, an Order To Show Cause was issued on January 17, 2003, allowing the parties until January 28, 2003, to respond, in writing, as why the instant petition should not be dismissed. The Employer responded in writing. The Union responded verbally. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

agreement know as the "Tech Unit II" contract which, by its terms, as most recently extended, is effective from June 25, 2002 to December 1, 2004. During bargaining in the summer of 2002 for the "Tech Unit II" contract, the Employer notified the Union of its intention to file a unit clarification petition in regard to the MAs at its Oak campus and to seek their inclusion in the existing "Service and Support Unit."

On November 4, 2002, following an election in Case GR-7-RC-22320, in a residual unit of MAs employed at the Sherman campus, a Certification of Results of Election issued placing the MAs at that campus in the pre-existing "Service and Support Unit" represented by the Union. The most recent collective-bargaining agreement covering that unit is effective from February 4, 2002 until December 1, 2005.

Analysis

The Board described the purpose of unit clarification proceedings in *Union Electric Co.,* 217 NLRB 666 (1975):

> Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

Normally the Board refuses to clarify a unit mid-contract. To do otherwise would be too disruptive to the bargaining relationship. See *Edison Sault Electric Co.,* 313 NLRB 753 (1994); *Wallace-Murray Corp.,* 192 NLRB 1090(1971). However, there is an exception to this rule which the Employer claims is relevant. A petition will be entertained shortly after a contract is executed when the parties could not reach agreement on a disputed classification and the UC petitioner did not abandon its position regarding the disputed classification in exchange for contractual concessions. *St. Francis Hospital,* 282 NLRB 950 (1987).

St. Francis, however, is distinguishable. The contract involved there was an initial agreement. The disputed classification ('Internal Float Pool' Registered Nurses) was never historically included or excluded under any collective bargaining agreement. However, in the instant matter the seven MAs historically have been included in the "Tech Unit II" for two successive contracts. Simultaneously, the other MAs continued to work at the Employer's Sherman Campus, unrepresented until November 4, 2002. Thus, the parties never agreed to include them in with the 'Tech Unit II' MAs, and they were historically excluded from that unit.

The Board has denied clarification where the group or classification of employees sought to be added to a unit existed at the time that the unit was certified. In the instant case, this parallels the circumstance of the "Tech Unit II" MAs sought by petition to be added to the "Service and Support Unit". *Gould-National Batteries, Inc.*, 157 NLRB 679 (1966); *Bendix Corp.*, 168 NLRB 371 (1968); *AMF Inc.*, 193 NLRB 1113 (1971); *International Silver Co.*, 203 NLRB 221 (1973).

Consequently, it would be inappropriate now to disturb the historical composition of the "Service and Support Unit" by placing the seven Oak Campus MAs from the "Tech Unit II" into that bargaining unit. Accordingly, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition shall be, and is, dismissed.[2]

Dated at Detroit, Michigan this 5th day of February, 2003.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board
Seventh Region
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Classification

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[2] Under provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, D. C. 20570**. This request must be received by the Board in Washington by February 19, 2003.